

REMARKS

Applicant has carefully reviewed the Application in light of the Decision on Appeal mailed December 3, 2009 and the Final Office Action mailed August 14, 2007. At the time of the Final Office Action, Claims 1-13, 15-16, 18, 23 and 36-49 were pending in the Application and stand rejected. Applicant amends several Independent Claims without prejudice or disclaimer. The amendments to these claims are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 103 Rejections

The Examiner rejects Claims 1-13, 15-16, 18, 23 and 36-49 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,828,737 issued to Sawyer (hereinafter "*Sawyer*") in view of U.S. Patent No. 6,338,046 issued to Saari (hereinafter "*Saari*").

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all of the claim limitations.¹

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims.

¹ See M.P.E.P. §2142-43.

Independent Claim 1 recites (*inter alia*) “...said network flow data including a number and type of packets for a flow, wherein the network flow data also includes a protocol type, a source and destination Internet protocol (IP) address, a next hop address, and a first and last timestamp of packets in the flow...and wherein the call detail record is reformatted to identify a quality of service for the flow, and a priority designated for the flow.”

First, no reference details network flow data including a protocol type, a source and destination Internet protocol (IP) address, a next hop address, and a first and last timestamp of packets in the flow. Note that all of these elements would appear in the network flow data, as outlined by Independent Claim 1. Second, no reference offers a mechanism for ***reformatting the call detail record***. Note that this particular dependent claim was not argued on the previous Appeal submission. Third, in no event does any type of reformatting include an ***identification of a quality of service for the flow and a priority designated for the flow***. Applicant has reviewed the cited references and finds nothing that would be relevant to these teachings.

For at least these reasons, Independent Claim 1 is allowable over any cited reference, or combination of references. The other Independent Claims recite limitations similar, but not identical, to those recited in Independent Claim 1. Therefore, these claims are also allowable, for example, for the same reasons as identified above. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

The Request for Continued Examination fee for \$810 is being paid concurrently herewith via the Electronic Filing System (EFS) by way of Deposit Account No. 50-4889 authorization. No additional fees are believed due. However, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at (214) 823-1241.

Respectfully submitted,

Patent Capital Group
Attorneys for Applicant

/Thomas J. Frame/
Thomas J. Frame
Reg. No. 47,232

Date: December 23, 2009

Customer No. 86421